IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9036 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

AMARSINH DEVISINH BARIA

Appearance:

1. Special Civil Application No. 9036 of 2002

MR ASHISH H SHAH for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 26/12/2002

ORAL JUDGEMENT

1. Rule. Mr. P.Y. Divyeswar for Mr. G.K. Rathoda,learned advocate for respondent waives service

and accept notice of rule.

2. In this petition, petitioner GSRTC has been assailing the award passed in Reference (LCV) No. 222 of 1999 whereby the Labour Court directed reinstatement in service of the respondent workman with 75 % bakwages for the period from 26-10-1998 to 28-2-2000, since the dispute has been raised after almost 4 1/2 years of the termination of the service of the respondent. I have perused the impugned award. It is suggested there from that the misconduct alleged against respondent workman is unauthorised absence from service, i.e. 2-6-1993 to 5-7-1993, i.e. 33 days. Chargesheet was served. The respondent workman was dealt with departmentally . In the departmental inquiry the workman did not remain present and in the departmental proceedings the workman was found guilty and was imposed penalty of dismissal from service. Said dismissal from service was questioned by way of Reference (LCV) No. 222 of 1999 under section 10of the I.D. Act. It is also revealed from the impugned award that the respondent remained absent for a period of 33 days. Considering all these, Labour Courtaltered the penalty of dismissal from service to reinstatement in service with 75 % backwages since the misconduct of unauthorised absence for a period of 33 days is for the reason of enteric fever from which the respondent workman suffered. The penalty to be imposed has to be commensurate with gravity of misconduct of respondent. It is not the misconduct of any other type which may call for harsh penalty. It is suggested that the respondent had suffered from enteric fever which prevented him from reporting for duty. Having regard to the facts as above, payment of 75 % backwages is on higher side and in my opinion the respondent deserved to be reinstated in service with 50 % backwages and not 75 % backwages as ordered in the impugned award by the Labour Court.

3. In view of the above, the impugned award deserve to be interfered with in as much as the respondent workman would be entitled to 50 % backwages instead of 75 % backwages. Since the respondent is superannuated he would be entitled to all consequential benefits accordingly. Petition partly allowed. Rule made absolute to the aforesaid extent. No costs.

Dt: 26-12-2002 (N.G. Nandi, J)

/vgn